REMARKS

In an Office Action dated October 4, 2006, the Examiner divided the claims into Group I comprising claims 1-7 and Group II comprising claims 8-12, imposing a restriction requirement between the groups and contending that the applicant has provisionally elected Group I. The Examiner then rejected claim 1 under 35 U.S.C. §103(a) as being unpatentable over Kurittu (U.S. patent application no. 2004/0120309) in view of Kokko (U.S. patent no. 5,790,534) and Shaffer (U.S. patent no. 6,683,889), claims 2 and 4 under 35 U.S.C. §103(a) as being unpatentable over Kurittu in view of Kokko and Shaffer and further in view of Applicant's Admitted Prior Art (AAPA), claim 3 under 35 U.S.C. §103(a) as being unpatentable over Kurittu in view of Kokko, Shaffer, AAPA, and Simonsson (U.S. patent no. 6,950,669), claim 3 under 35 U.S.C. §103(a) as being unpatentable over Kurittu in view of Kokko, Shaffer, and Uesugi (U.S. patent application no. 2003/0072266), and claim 6 under 35 U.S.C. §103(a) as being unpatentable over Kurittu in view of Kokko, Shaffer, Uesugi, and Simonsson. The rejections and objections are traversed and reconsideration is hereby respectfully requested.

The Examiner divided the claims into Group I comprising claims 1-7 and Group II comprising claims 8-12, imposing a restriction requirement between the groups and contending that the applicant has provisionally elected to prosecute the invention of Group I, that is, claims 1-7. The applicant has canceled claims 8-12 from further consideration in this application and plans on filing a divisional application to prosecute claims 8-12.

The Examiner rejected claim 1 under 35 U.S.C. §103(a) as being unpatentable over Kurittu in view of Kokko and Shaffer. Specifically, the Examiner contended that Kurittu teaches a VoIP packet transmission method that comprises determining a packet delay corresponding to a base site, comparing the determined packet delay, and determining a jitter buffer depth target based on the comparison (FIG. 10 and paragraph 11). The Examiner acknowledged that Kurittu fails to teach that a packet delay is an RF load metric a radio frequency (RF) load metric but contended that Kokko teaches a packet transmission method where packet delays are considered to be an RF load metric

(col. 1, lines 21-23 and col. 2, lines 5-10). The Examiner acknowledged that Kurittu also fails to teach comparing a determined RF load metric to an RF load threshold to produce a comparison, but contended that this is taught by Shaffer, which compares a determined delay (jitter) of ingress packets to a delay threshold to produce a comparison (FIG. 6, steps 556-564, and col. 5, lines 28-37).

The applicant contends that he invented the features of claim 1 prior to the filing date of Kurittu. In support of his contention, attached hereto is a Declaration of John Harris, inventor of the pending application, stating that the features of claim 1 were invented prior to the filing date of Kurittu, that is, prior to April 24, 2001. Therefore, the applicant respectfully contends that Kurittu is not prior art to claim 1 and that, as a result, Kurittu does not teach the features of claim 1 of determining a jitter buffer depth target comprising steps of determining a radio frequency (RF) load metric corresponding to a base site, comparing the determined RF load metric to an RF load threshold to produce a comparison, and determining a jitter buffer depth target based on the comparison.

Such features also are not taught by Kokko or Shaffer. Kokko teaches nothing concerning jitter buffers as the only buffers taught by Kokko are buffers for storing data packets about to be transmitted. Shaffer merely teaches a system where a jitter buffer depth is adjusted based on an occupancy of the jitter buffer, that is, a delay within the jitter buffer. Observing an amount of data that is stored in a jitter buffer is not a determination of an RF load. Nowhere does Shaffer teach any determining of an RF, or air interface, load metric, let alone adjusting a jitter buffer depth based on an RF load metric. Therefore, neither Kokko nor Shaffer, individually or in combination, teach the features of claim 1 of determining an RF load metric corresponding to a base site and determining a jitter buffer depth target based on a comparison of the determined RF load metric to an RF load threshold. Accordingly, the applicant respectfully requests that claim 1 may now be passed to allowance

Since claims 2-7 depend upon allowable claim 1, the applicant respectfully request that claims 2-7 may now be passed to allowance.

As the applicant has overcome all substantive rejections and objections given by the Examiner and has complied with all requests properly presented by the Examiner, the applicant contends that this Amendment, with the above discussion, overcomes the Examiner's objections to and rejections of the pending claims. Therefore, the applicant respectfully solicits allowance of the application. If the Examiner is of the opinion that any issues regarding the status of the claims remain after this response, the Examiner is invited to contact the undersigned representative to expedite resolution of the matter.

Respectfully submitted,
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